Filed 5/3/07 VanSandt v. Trivedi CA4/1

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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DENNIS VANSANDT et al., Plaintiffs and Respondents, v. ARVIND TRIVEDI et al., Defendants and Appellants.	D048030 (Super. Ct. No. GIN038386)

APPEAL from a judgment of the Superior Court of San Diego County, Amalia L. Meza, Judge. Judgment vacated and remanded with directions.

Arvind and Radha Trivedi (the Trivedis) appeal from a judgment of the trial court, which quieted title in a dispute over the proper boundary line between the Trivedis' real property and real property owned by Dennis, Dorothy and Joanne VanSandt (the

VanSandts).[1] The Trivedis argue (1) that the trial court exceeded its jurisdiction by amending the judgment to correct a clerical mistake under Code of Civil Procedure[2] section 473, subdivision (d); (2) that the amended judgment is void because it contains an insufficient description of the real property awarded to the VanSandts; and (3) that substantial evidence does not support the trial court's application of the agreed-boundary doctrine, under which it quieted title in favor of the VanSandts.

As we will explain, we conclude that the amended judgment is void because it contains an insufficient description of the subject real property. Accordingly, we vacate the judgment and we remand with directions for the trial court to enter judgment containing an adequate description of the subject real property.

I

FACTUAL AND PROCEDURAL BACKGROUND

The VanSandts own real property in Fallbrook that is bordered on the north side by real property owned by the Trivedis. The VanSandt family bought their approximate five-acre parcel in 1965. The Trivedi family bought their approximate 22-acre parcel in 1982.

When the Trivedis attempted to plant crops on the southernmost portion of their property in 2002, a dispute arose between the Trivedis and the VanSandts about the

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1 Dorothy, who was 86 years old at the time of trial, is Dennis's mother and Joanne's mother-in-law.

2 All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

location of their shared property line. The VanSandts filed a complaint seeking to quiet title, and the Trivedis filed a cross-complaint.[3]

The trial court held a one-day bench trial.

Dorothy VanSandt testified that the property was undeveloped and overgrown with vegetation when her family purchased it in the 1960's. The VanSandts built a house on the property and used it for a weekend home but never had the property surveyed to determine their property line.

However, at some point Dorothy had a discussion with the neighboring property owner who preceded the Trivedis about the location of their shared property boundary. The neighbor erected a fence where the parties believed the boundary was located. Dorothy assumed that the fence was built on the legal property line.

Much of the fence was washed away in 1978 when a dam broke, flooding the property and bringing in silt that reached almost to the roof of the VanSandts' house. The VanSandts performed extensive excavation work after the flood, creating a berm of soil where the fence used to be located. The only remaining portion of the fence was on a steep hillside behind the VanSandts' house.

The property flooded again in 1993 when a creek backed up onto the property. Again, the VanSandts excavated the area, and they reinstalled the berm. The portion of the fence on the hillside remained.

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[3] The Trivedis' cross-complaint is not reproduced in the parties' joint appendix, but the Trivedis are referred to as cross-complainants in several documents contained therein.

In 2002, when the Trivedis began using the southernmost portion of their property for growing commercial crops for the floral industry, the Trivedis had the property surveyed to determine the legal boundary of the VanSandts' property based on the legal property descriptions in title documents.

The survey established that the legal property line was further south than the VanSandts had believed and was further south than a line drawn straight east from the remaining portion of the fence. Moreover, according to the legal property line shown in the survey, the VanSandts had built an encroaching structure on the Trivedis' property. Specifically, in the late 1980's Dennis VanSandt erected a 12-foot-by-12-foot workshop shed on the north end of the VanSandts' property, which, according to the survey, encroached a few feet onto the Trivedis' land.

Dennis VanSandt testified that the fence had extended straight east from the portion of the fence that remained on the hillside. He had always believed that if the portion of the fence remaining on the hillside was extended in a straight line east across the rest of the property, it would indicate the legal property line. However, the survey showed that the legal property line was 26 feet farther to the south than the extended fence line.[4]

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[4] In addition to the evidence presented through trial testimony, the parties stipulated that the deeds by which the Trivedis and the VanSandts obtained title to their respective properties both contained a legal description of the property boundaries from which a surveyor was able to accurately determine the location of the legal boundary between the Trivedis' property and the VanSandts' property. We note that the joint appendix contains an unsigned copy of the stipulation. However, the trial transcript reflects that the parties filed the stipulation and that the trial court reviewed it as part of the evidence at trial.

The Trivedis' surveyor had found a metal property stake marking the boundary of the property. Dennis VanSandt testified that he had created a handwritten drawing, referred to at trial as exhibit 15, which showed the portion of the disputed 26-foot-wide strip of property that he was requesting the court award to the VanSandts. Exhibit 15 showed a triangular piece of land, marked at certain points with width measurements. The triangle was 26 feet wide at its widest point, but the triangle tapered to a very narrow strip at its eastern end to meet the property stake that was found by the surveyor. According to Dennis VanSandt's description, exhibit 15 did not reflect the location of the fence line; rather, it represented the relief that the VanSandts were seeking in the lawsuit. In short, exhibit 15 represented the VanSandts' *compromise* position, containing *less* property than if the agreed boundary of the fence line was used.

At the close of the bench trial, the trial court orally delivered a tentative statement of decision, quieting title in favor of the VanSandts. The trial court stated that the VanSandts had "established a case under the doctrine of the agreed boundary." The trial court ruled (1) that there was an uncertainty in the true boundary "because, although there's no question that the legal description has not changed, there was uncertainty between the owners of the two properties back in the '60's, when the property was wild, and there was shrubs and brush and everything"; (2) there was at least an implied agreement when "the fence was put up by the prior owner, and both sides acted as though that was the property demarcation," with the agreement coming about "as a result of a discussion that occurred between . . . Dorothy VanSandt . . . and the prior owner"; and (3) there was an acceptance and acquiescence in the property line throughout the 21-year

relationship between the Trivedis and the VanSandts "where they both accepted and acquiesced in the property line being marked off by the fence."

The VanSandts filed a pleading requesting that the trial court's oral statement of decision be adopted as final or, in the alternative, that the court adopt their proposed statement of decision. Their proposed statement of decision identified the "agreed upon boundary" as "26 feet north of the [Trivedi] recorded south boundary," but stated that "the VanSandts *have agreed to reduce the claim to the real property* which is described in measurement of feet and inches . . . and attached hereto as Attachment 1 [(hereafter Attachment 1)]. This real property is approximately 7,134 square feet." (Italics added.) Attachment 1 was similar to trial exhibit 15. It showed the same triangular area that Dennis VanSandt drew on exhibit 15, but it included an additional narrow area at the eastern end of the property that was not shown on exhibit 15.

The VanSandts also submitted a proposed judgment, which appended Attachment 1 as a description of the property to be awarded to the VanSandts. The proposed judgment described the property to be awarded as "that real property that runs the entire length across the southern portion of [the Trivedis'] south boundary line, (which is set forth as Parcel Two (2) of Assessor's Map Book 108, page 19, in the County of San Diego, State of California, and more specifically described in the Quit Claim Deed recorded in said county on August 19, 1994, as document number 1994-0501709), *and that property north of said described line as set forth in attachment 1 and which is approximately 7,134 square feet.*" (Italics added.)

In response, the trial court sent the parties a *proposed* judgment, giving the parties a deadline by which to submit any objections. Among other things, the proposed judgment (1) adopted the trial court's oral statement of decision and (2) stated that "the northern portion of [the VanSandts'] property line has been extended by approximately 26 feet north of [the Trivedis'] recorded south boundary line, consisting in its entirety of approximately 7,134 square feet." The Trivedis filed objections to the proposed judgment.[5]

On August 9, 2005, the trial court issued a final judgment that differed from its proposed judgment. In the final judgment, the trial court (1) adopted its tentative statement of decision, with one modification not relevant here; and (2) stated that the VanSandts "are the owners of real property that runs across the entire southern portion of [the Trivedis'] boundary line which is set forth as Parcel Two (2) of Assessor's Map Book 108 page 19 in the County of San Diego, State of California." The judgment thus neither (1) identified the 26-foot-wide strip that measured approximately 7,134 square feet, as had the proposed judgment, nor (2) referred to Attachment 1 as suggested by the VanSandts' proposed judgment. Instead, the judgment was *unclear* about what property, *if any*, beyond the legal property line was being awarded to the VanSandts.[6]

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5 The Trivedis' objections are not in the joint appendix, but the judgment recites the fact that the Trivedis filed objections.

6 The judgment was served on the parties by the clerk of the court on August 9, 2005. Further, counsel for the Trivedis served notice of entry of judgment on August 15, 2005.

On November 15, 2005, the Trivedis filed a motion to vacate the judgment pursuant to section 473, subdivision (d) on the ground that the judgment was void. The Trivedis argued that the judgment did not contain an adequate description of the real property awarded to the VanSandts. They supported their motion with (1) a declaration from a civil engineer stating that the description of the property in the judgment was too vague and uncertain for any surveyor to lay out the location of a property boundary; and (2) a declaration from a title officer stating that because the judgment lacked a sufficient description of the property (a) title insurance could not be issued for the new parcel awarded to the VanSandts, (b) there would be a cloud on title for the Trivedis' property, and (c) any title policy for the Trivedis' property would contain an exception.

In their opposition, the VanSandts agreed that the judgment was not sufficiently definite, but they did *not* agree that the judgment should be voided as a result. The VanSandts suggested that because the trial court had authority under section 473, subdivision (d) to correct clerical mistakes in a judgment, it could issue a nunc pro tunc order directing that the words "26 feet North" be inserted in the judgment. Under the VanSandts' suggestion, the judgment would state the VanSandts were the "owners of real property that runs *26 feet North* across the entire southern portion of [the Trivedis'] boundary line."

In a supplemental opposition, the VanSandts made an alternate suggestion. They proposed that the judgment be amended nunc pro tunc to include Attachment 1 and to add a phrase at the end of the relevant paragraph. Thus, Attachment 1 would be appended to the judgment, which would state that the VanSandts "are the owners of real

property that runs across the entire southern portion of [the Trivedis'] boundary line which is set forth as Parcel Two (2) of Assessor's Map Book 108 page 19 in the County of San Diego, State of California, *and that property north of said described line as set forth in attachment 1*."[7] (Italics added.)

The trial court adopted the VanSandts' alternate suggestion. The trial court stated that it had "the power after final judgment and regardless of lapse of time to correct clerical errors o[r] mistakes in its records. . . . This inherent power is affirmed by . . . section 473 where it indicates that 'the court may, upon motion of the injured party or its own motion, correct clerical mistakes in its judgment or orders as entered so as to conform to the judgment or ordered directed.'" On December 9, 2005, adopting the VanSandts' alternate approach, the trial court appended Attachment 1 to the judgment and added the words "and that property north of said described line as set forth in Attachment 1" at the end of the relevant paragraph. The amended judgment also stated, "This judgment is corrected nunc pro tunc this 9th day of December, 2005 as herein inserted with attachment and this corrected Judgment supersedes the Judgment dated August 9, 2005."

On February 6, 2006, the Trivedis filed a notice of appeal "from the judgment entered on December 9, 2005."

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[7] Along with their supplemental opposition, the VanSandts submitted a plat map created by a surveying firm, which purportedly showed the triangular piece of property that would be awarded to the VanSandts if the court were to use Attachment 1 to clarify the judgment. The plat map shows a parcel of 9,724.2 square feet, but the VanSandts had represented that both exhibit 15 and Attachment 1 showed a parcel of 7,134 square feet.

II

DISCUSSION

A. *The Appeal Is Timely*

We first address the VanSandts' argument that the appeal is not timely. The VanSandts argue that the Trivedis should have, but did not, file a notice of appeal within 60 days of the service of the August 9, 2005 judgment. They argue that the December 9, 2005 amendment was nonsubstantive, and thus did not reset the Trivedis' time to appeal from the August 9, 2005 judgment.

"When a judgment has been modified, an appeal must be taken from the original judgment if the change was a clerical one, and from the modified judgment if the change was material and substantial." (*Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 743-744.) "'When the trial court amends a nonfinal judgment in a manner amounting to a *substantial modification* of the judgment . . . , the amended judgment supersedes the original and becomes the appealable judgment . . . . Therefore, a new appeal period starts to run from notice of entry or entry of the *amended* judgment.'" (*CC-California Plaza Associates v. Paller & Goldstein* (1996) 51 Cal.App.4th 1042, 1048.)

"Not every alteration of a judgment by the court which rendered it will operate as a readjudication of the case." (*George v. Bekins Van & Storage Co.* (1948) 83 Cal.App.2d 478, 481 (*George*).) The test regarding when a "'party must act in order to get relief from an order or judgment against him [is] whether he could have obtained the desired relief (on a proper showing) before the *nunc pro tunc* order was made. Could he

have made his application as the judgment, order, or record *was?* . . . Could petitioner, against objection, have maintained an appeal from the judgment as first entered?'" (*Ibid.*, quoting *Spencer v. Troutt* (1901) 133 Cal. 605.) Thus, "if a party can obtain the desired relief from a judgment before it is amended, he must act — appeal therefrom — within the time allowed after its entry." (*George*, at p. 481.)

Applying these guidelines, we conclude the December 9, 2005 amendment was a substantial and material change to the August 9, 2005 judgment.

First, the trial court's amendment of the August 9, 2005 judgment substantively affected the rights of the parties in that it substituted a materially different description of the land to be awarded to the VanSandts. The August 9, 2005 judgment did not specifically award *any* land to the VanSandts beyond the legal boundary line. The December 9, 2005 amendment, on the other hand, awarded the VanSandts all of the property described in Attachment 1.

Second, the Trivedis' appeal raises issues specific to the December 9, 2005 amendment. Among other things, the Trivedis are (1) challenging the sufficiency of the legal description of the property to be awarded to the VanSandts as set forth in the December 9, 2005 judgment and Attachment 1 thereto, and (2) arguing that the trial court lacked jurisdiction to amend the August 9, 2005 judgment and enter the December 9, 2005 judgment. Neither of those issues could have been raised prior to the December 9, 2005 amendment, and thus the Trivedis could *not* "'have maintained [their] appeal from the judgment as first entered[.]'" (*George, supra,* 83 Cal.App.2d at p. 481.)

For both of these reasons, we conclude that the December 9, 2005 amendment was material and substantial. Accordingly, the Trivedis timely appealed by filing a February 6, 2005 notice of appeal from the judgment as amended on December 9, 2005.

B. *The Trial Court Had Jurisdiction to Amend the Judgment*

The Trivedis argue that the trial court exceeded its jurisdiction in amending the August 9, 2005 judgment. They argue that section 473, subdivision (d) allows the trial court to correct a judgment containing *a clerical mistake*, but the trial court did more than correct a clerical mistake in issuing the December 9, 2005 amendment, and thus the amendment was improper. As we will explain, we disagree.

Section 473, subdivision (d) states that "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."[8] Consistent

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[8] Apart from its power to correct clerical mistakes in a judgment, "[o]nce judgment has been entered, the trial court does retain jurisdiction for a limited period of time to entertain and grant a motion for a new trial (§ 655 et seq.) or a motion for a judgment notwithstanding the verdict (§ 629). The court also retains jurisdiction to consider and grant a motion to vacate a judgment and enter a different judgment for either of two reasons: an incorrect or erroneous legal basis for the decision, not consistent with or supported by the facts, or a judgment not consistent with or not supported by the special verdict. (§§ 663, 663a.) The court also retains jurisdiction to entertain and grant a motion for relief from a judgment taken against a party through mistake, inadvertence, surprise, or excusable neglect. (§ 473.)" (*Craven v. Crout* (1985) 163 Cal.App.3d 779, 782-783.) None of these other methods for amending an already-entered judgment were invoked by the parties or the trial court. Thus, we examine only whether the December 9, 2005 amendment was proper under section 473, subdivision (d) as a correction of a clerical mistake.

with this rule, "[a] court of general jurisdiction has power after judgment, pending an appeal and even after affirmance of the judgment on appeal, and regardless of lapse of time, to correct clerical errors whether made by the court, clerk or counsel so that its records will conform to and speak the truth." (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 506.)

"'Clerical error . . . is to be distinguished from judicial error which cannot be corrected by amendment. The distinction between clerical error and judicial error is "whether the error was made in *rendering* the judgment, or in *recording* the judgment rendered."'" (*Aspen Internat. Capital Corp. v. Marsch* (1991) 235 Cal.App.3d 1199, 1204, italics added.) Thus, "'"[t]he term 'clerical error' covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. If an error, mistake, or omission is the result of *inadvertence*, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected to correspond with what it would have been but for the inadvertence. [Citations.] The court has inherent power to correct such errors."'" (*Ibid.*, italics added.)

Here, it is clear that the August 9, 2005 judgment contained a clerical mistake in that certain words were missing, causing the judgment to fail to accurately record the ruling that the trial court intended. The trial court clearly always intended to award property to the VanSandts. The trial court's oral statement of decision (confirmed in the August 9, 2005 judgment) stated that the court intended to rule in favor of the VanSandts under the agreed-boundary doctrine and that the agreed boundary was "marked off by the fence" that had been erected by the former owner of the Trivedis' property. Moreover, it

is clear from the trial court's proposed judgment, drafted before the August 9, 2005 judgment, that it intended to award a parcel of property to the VanSandts north of the Trivedis' legal property line. However, because of an apparent omission of certain words, the August 9, 2005 judgment did not describe *any* property awarded to the VanSandts. Instead, it stated merely the undisputed fact that the VanSandts "are the owners of real property that runs across the entire southern portion of [the Trivedis'] boundary line." It is thus clear to us that the trial court made a clerical error in omitting from the August 9, 2005 judgment a description of the property that it intended to award to the VanSandts.

As the trial court explained on the record, it corrected that clerical error by making the December 9, 2005 amendment. The December 9, 2005 amendment made no substantive change to the trial court's intended judgment as announced in the statement of decision. Instead, the amended judgment simply gave a more exact expression to the trial court's original intention indicated in its oral statement of decision, by setting forth a specific measurement and description of the property to be awarded to the VanSandts under the agreed-boundary doctrine.

Contrary to the Trivedis' argument, we are not convinced that the trial court diverged from the intended judgment expressed in the statement of decision when it described the boundary line in the December 9, 2005 amendment by reference to Attachment 1 rather than some other method, such as (1) specifying that the boundary was approximately 26 feet north of the legal property line, or (2) stating that the boundary would be drawn in a straight line east from the remaining portion of the fence.

Significantly, the statement of decision did not specify *how* the court would describe the boundary "marked off by the fence" that was built by the former property owner. Dennis VanSandt, in his testimony about exhibit 15, offered to accept *less* than the whole parcel between the Trivedis' legal property line and the former fence line. The trial court was within its discretion to treat this offer as a waiver by the VanSandts and to take that waiver into account by describing the property awarded to the VanSandts as the triangular parcel shown in Attachment 1.

Because the December 9, 2005 amendment merely corrected the trial court's inadvertent error in failing to describe the property awarded to the VanSandts, the trial court properly relied on its authority under section 473, subdivision (d) to amend the August 9, 2005 judgment.

C. *The Agreed-Boundary Doctrine*

The next issue is whether substantial evidence supports the trial court's ruling that the VanSandts established the elements of the agreed-boundary doctrine.

"When coterminous landowners are uncertain as to the true location of their common boundary, they may establish that boundary by agreement, pursuant to a legal theory commonly referred to as the 'agreed-boundary' doctrine." (*Bryant v. Blevins* (1994) 9 Cal.4th 47, 49 (*Bryant*).) "The agreed-boundary doctrine is an exception to the general rule, which accords determinative legal effect to a description of land contained in a deed." (*Mehdizadeh v. Mincer* (1996) 46 Cal.App.4th 1296, 1302 (*Mehdizadeh*).)

The trial court's finding that the agreed-boundary doctrine applies is reviewed for substantial evidence. (*Mehdizadeh*, *supra*, 46 Cal.App.4th at p. 1304.) To be substantial,

the evidence supporting the judgment must be "of ponderable legal significance, . . . reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.) We review the record as a whole, resolving all conflicts in favor of the prevailing party and indulging all legitimate and reasonable inferences in favor of the findings by the trier of fact. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) If the trier of fact's finding is supported by substantial evidence, contradicted or uncontradicted, the judgment must be upheld regardless of whether the evidence is subject to more than one interpretation. (*Ibid.*)

We thus turn to the required elements of the agreed-boundary doctrine, applying a substantial evidence review. "The requirements of proof necessary to establish a title by agreed boundary are well settled by the decisions in this state. . . . The doctrine requires that there be [(1)] an uncertainty as to the true boundary line, [(2)] an agreement between the coterminous owners fixing the line, and [(3)] acceptance and acquiescence in the line so fixed for a period equal to the statute of limitations or under such circumstances that substantial loss would be caused by a change of its position."[9] (*Ernie v. Trinity Lutheran Church* (1959) 51 Cal.2d 702, 707 (*Ernie*), citations omitted; see also *Bryant*, *supra*, 9 Cal.4th at p. 54 [reaffirming "the requirements necessary to establish the applicability of the agreed-boundary doctrine, set forth in *Ernie*"].)

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9 The parties agreed that the applicable statute of limitations was five years, based on the limitations period for a claim of adverse possession.

In determining whether these elements have been established, "it is not required that the true location be absolutely unascertainable . . . ; that an accurate survey from the calls in the deed is possible . . . ; or that the uncertainty should appear from the deeds . . . . The line may be founded on a mistake." (*Ernie, supra*, 51 Cal.2d at pp. 707-708, citations omitted.) Further, "it has been consistently held that a 'dispute or controversy is not essential' to the required 'uncertainty.'" (*Kunza v. Gaskell* (1979) 91 Cal.App.3d 201, 209; see also *Mello v. Weaver* (1950) 36 Cal.2d 456, 460 ["A dispute or controversy is not essential . . . , but it may be evidence of the existence of a doubt or uncertainty," citations omitted].)

Here, Dorothy VanSandt testified (1) that her family and the former neighboring landowner were uncertain about the location of the property line, (2) that they did not obtain a survey, and (3) that they had discussions about erecting the fence to mark what they believed to be the true property line. This evidence satisfies both the first element (i.e., requirement of uncertainty as to the true boundary line) and the second element (i.e., an agreement fixing the property line).

Further, the evidence established that over the course of two decades the parties operated under the assumption that the full fence, and later the portion remaining on the hillside if it were extended, marked their property boundary. The VanSandts also relied on the parties' agreement to their detriment by locating the shed on their side of the agreed boundary. This evidence easily satisfies the third element of the agreed-boundary doctrine (i.e., acceptance and acquiescence in the property line for a period equal to the

statute of limitations or under such circumstances that substantial loss would be caused by a change in the property line).

The Trivedis argue that uncertainty is not present in this case because the legal boundary line could have been determined by resort to deed documents and a land survey. We reject this argument because "[t]he application of the doctrine is not prevented by . . . the circumstance that the line of the deeds could be determined by a survey." (*Martin v. Lopes* (1946) 28 Cal.2d 618, 626 (*Martin*); see also *Bryant*, *supra*, 9 Cal.4th at p. 54 [declining "to limit application of the agreed-boundary doctrine to instances in which existing legal records are inadequate to settle a boundary dispute"].)

The Trivedis also argue that the agreed-boundary doctrine should not apply here because the parties merely made a "mistake" as to the location of the property line and believed that the fence was located on the true property line. However, it is well-established that such facts do not defeat the application of the doctrine. "The application of the doctrine is not prevented by [the parties'] belief that the fence was upon the line fixed by the deed . . . ." (*Martin*, *supra*, 28 Cal.2d at p. 626 [rejecting argument that that the doctrine did not apply because "it was the intention of the parties to set the boundary along the true line called for by their deeds, [and] that their failure to do so was merely the result of mistake," *id*. at p. 625].) "In cases applying the doctrine, . . . lack of

knowledge by both parties o[f] where the line is or should be drawn, is all that need be taken into consideration." (*Id.* at p. 626.)[10]

Finally, the Trivedis argue that it would be improper to apply the agreed-boundary doctrine where the boundary marker (i.e., the fence) no longer exists. We disagree. The record contains substantial evidence, through the testimony of Dennis VanSandt, that the former fence continued in a straight line to the east from the portion of the fence that is still standing on the hillside. From that testimony, the agreed boundary can easily be set based on a line running eastward from the end of the remaining portion of the fence, as if the full fence still existed. The trial court could also properly award the VanSandts a smaller parcel on their side of the agreed boundary, as it apparently attempted to do by relying on Dennis VanSandt's compromise position as represented by exhibit 15 and Attachment 1.[11]

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10 The Trivedis attempt to rely on the rule that "when existing legal records provide a basis for fixing the boundary, there is no justification for inferring, *without additional evidence*, that the prior owners were uncertain as to the location of the true boundary or that they agreed to fix their common boundary at the location of a fence." (*Bryant*, *supra*, 9 Cal.4th at p. 58, italics added.) This rule does not advance the Trivedis' argument because here, unlike in *Bryant*, there *was* "additional evidence" of uncertainty and an agreement — i.e., Dorothy VanSandt's testimony about her conversations with the previous owner.

11 Specifically, relying on the VanSandts' compromise offer as represented by exhibit 15, the trial court attempted to award the VanSandts the triangular parcel depicted in Attachment 1 rather than awarding them the *entire* parcel between the legal property line and a line drawn directly east from the remaining portion of the fence. Setting the boundary in this way favored the Trivedis, and we find no error in it.

D. *The Amended Judgment Contains a Sufficient Legal Description of the Property*

Finally, we consider whether the judgment, as amended on December 9, 2005, sufficiently describes the relevant parcel of property.

Relying on the rule that "[a] purported description in a judgment affecting real property which is no description at all renders the judgment void" (*City of Redlands v. Nickerson* (1961) 188 Cal.App.2d 118, 122 (*City of Redlands*), the Trivedis argue that the judgment is void because it does not adequately identify the property awarded to the VanSandts.

The general rule is that "if a competent surveyor can take the description and locate the land on the ground, with or without the aid of extrinsic evidence, the description is sufficient." (*Daluiso v. Boone* (1969) 269 Cal.App.2d 253, 262.) Put another way, "'a judgment involving the right to possession of real property must sufficiently describe it to enable an officer charged with the duties of executing a writ of possession to go upon the ground, and, without exercising judicial functions, ascertain the locality of the lines as fixed by the judgment.'" (*People v. Rio Nido Co., Inc.* (1938) 29 Cal.App.2d 486, 490.) Thus, for instance, in *City of Redlands*, *supra*, 188 Cal.App.2d 118, 121-122, the court ruled that a judgment, which did not contain any description of the real property and attached a drawing purporting to describe the real property, was void because it lacked a sufficient description. The court explained that the drawing attached to the judgment was inadequate because "it [did] not appear therefrom in what city, county or state the property is located; and what purports to be a metes and bounds

description is wholly inadequate because no established point of beginning is located and, although distances are indicated thereon, no courses are shown." (*Id*. at p. 122.)

Applying these standards, we review whether the judgment sufficiently describes the property that it purports to award to the VanSandts.

The judgment relies on Attachment 1 to identify the parcel awarded to the VanSandts. However, Attachment 1, like the inadequate drawing in *City of Redlands, supra*, 188 Cal.App.2d 118, 122, does not contain a sufficient metes and bounds description or a description acceptable in any other established land survey system. Further, the record contains no competent evidence establishing that a competent surveyor or an officer charged with the duties of executing a writ of possession would be able to use the judgment, in connection with extrinsic evidence, to locate the property line fixed by the judgment.

Indeed, the record contains expert evidence indicating that the judgment is *inadequate* for that purpose. Specifically, in support of their motion to vacate the August 9, 2005 judgment, the Trivedis submitted a declaration from a surveyor who reviewed a judgment proposed by the VanSandts, which was very similar to the judgment as amended by the trial court on December 9, 2005.[12] Like the amended judgment, the

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12 The VanSandts' proposed judgment identified the parcel as "that real property that runs the entire length across the southern portion of [the Trivedis'] south boundary line, (which is set forth as Parcel Two (2) of Assessor's Map Book 108 page 19, in the County of San Diego, State of California, and more specifically described in the Quit Claim Deed recorded in said county on August 19, 1994, as document number 1994-0501709), *and that property north of said described line as set forth in attachment 1 and which is approximately 7,134 square feet*." (Italics added.) Similarly, the judgment as amended

judgment proposed by the VanSandts purported to describe the relevant real property by reference to Attachment 1. The surveyor stated that the VanSandts' proposed judgment "does not contain a precise description of the new VanSandt parcel. The sketch attached [i.e., Attachment 1] is not adequate to locate the VanSandt parcel, because it lacks reference points, lacks angles, and lacks coordinates to locate the proposed new boundary."[13]

Thus, we conclude that the judgment does not contain an adequate description of the real property that it purports to award to the VanSandts. Accordingly, the judgment is void. (See *City of Redlands*, *supra*, 188 Cal.App.2d at p. 122.)

However, we see no reason that the parties should be forced to incur the expense of another trial in this matter. Instead, we vacate the judgment, and we remand for the trial court to enter a judgment reflecting its intended statement of decision. The judgment shall contain an adequate legal description of the property awarded to the VanSandts.[14]

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on December 9, 2005, identifies the parcel as "real property that runs across the entire southern portion of [the Trivedis'] boundary line which is set forth as Parcel Two (2) of Assessor's Map Book 108 page 19 in the County of San Diego, State of California *and that property north of said described line as set forth in Attachment 1*." (Italics added.)

13 We note that the record contains a plat map drawn by a surveying firm, and submitted by the VanSandts. (Joint Appendix at p. 258.) However, the record contains no declaration from the surveying firm describing how the plat map was created. The existence of the plat map in the record thus does not establish it is possible for a competent surveyor to use Attachment 1 along with extrinsic evidence to accurately locate the property line fixed by the judgment.

14 Although the trial court is free to devise its own procedures for arriving at an adequate legal description of the property, one sensible approach may be for the trial

DISPOSITION

The judgment is vacated, and this matter is remanded to the trial court for proceedings consistent with this opinion. The parties are to bear their own costs on appeal.

IRION, J.

WE CONCUR:

HALLER, Acting P.J.

O'ROURKE, J.

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court to clearly express its intended resolution of the matter to the parties in laymen's terms, and then to direct the parties to meet and confer, with the assistance of a surveyor or other expert if necessary, to prepare a proposed judgment containing an adequate legal description of the property identified in the trial court's ruling. We note that the plat map prepared by the VanSandts' surveyor (see fn. 13, *ante*) may be acceptable to the parties as designating the land to be awarded to the VanSandts. If that is the case, the parties may want to submit that plat map as an attachment to a proposed judgment. The trial court may alternatively wish to appoint an expert pursuant to Evidence Code section 730 to craft an adequate legal description, charging the cost to the parties pursuant to Evidence Code section 731, subdivision (c).